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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,865	03/16/2007	Peter Kwasny	7472-104	7050
62836 7590 09/15/2009 BERLINER & ASSOCIATES 555 WEST FIFTH STREET 31ST FLOOR LOS ANGELES, CA 90013				
EXAMINER				
KIM, CHRISTOPHER S				
ART UNIT		PAPER NUMBER		
3752				
MAIL DATE		DELIVERY MODE		
09/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/580,865

Applicant(s)

KWASNY, PETER

Examiner

Christopher S. Kim

Art Unit

3752

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 0209.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 2-7, 9-20 and 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 8, 21, 22, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species D (figure 4) in the reply filed on June 26, 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 2-7, 9-20, 23-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 26, 2009.

Applicant indicated claims 12-14 and 23-26 are readable on the elected species. Claims 12 and 23 recite "a rotatable or slidable element having one or several openings which be moved in front of or into outlet" which are readable only on the species of figure 6.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "body containing a propellant and an aerosol product" recited in claim 1; the "valve" recited in claim 1; the "valve" recited in claim 27 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 27 is objected to because of the following informalities: The preamble of claim 27 is inconsistent with the preamble of its parent claim. Applicant is required to present claim 27 in independent form. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 27 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 27 recites "An aerosol can consisting of a nozzle body, which contains a propellant..." The disclosure, as originally filed, fails to teach that the nozzle body is an element of the aerosol can.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 8, 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "a rotatable cylindrical element" in line 4. It appears to be a double inclusion of the "adjustment device" recited in claim 1.

Claim 8 recites the limitation "the other end" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 22 recites the limitation "a rotatable, cylindrical element" in line 8. It appears to be a double inclusion of the "adjustment device" recited in line 4.

Claim 27 recites "An aerosol can consisting of a nozzle body, which contains a propellant and a material to be sprayed." It is uncertain whether "which contains a propellant and material to be sprayed" is referencing the nozzle body or the aerosol can.

Claim 27 recites the limitation "an aerosol can" in line 1. It appears to be a double inclusion of the "aerosol can" recited in claim 1.

Claim 27 recites the limitation "a nozzle body" in line 1. It appears to be a double inclusion of the "spray head" recited in claim 1.

Claim 27 recites the limitation "a propellant and a material to be sprayed" in lines 1-2. It appears to be a double inclusion of the "propellant and a material to be sprayed" recited in claim 1.

Claim 27 recites the limitation "a valve" in line 2. It appears to be a double inclusion of the "valve" recited in claim 1.

Claim 27 recites the limitation "a spray head" in line 3. It appears to be a double inclusion of the "spray head" recited in claim 1 and/or the "nozzle body" recited in claim 27, line 1.

Claim 27 recites the limitation "the valve" in line 4. It is uncertain whether it is referencing the valve recited in claim 27, line 2 or the valve recited in claim 1, line 2.

Claim 27 recites the transitional phrase "consisting of" but its parent claim 1 recites the transitional phrase "comprising" for the same claimed invention, "an aerosol can."

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 8, 22, 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Martini (3,961,756).

Martini discloses an aerosol can comprising:

- a body 1;
- a valve (column 3, lines 10-15);
- a spray head 5 provided with:
 - an axial borehole 25;
 - an adjustment device/rotatable cylindrical element 9;
 - a lateral bore 17;

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 21 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martini (3,961,756).

Martini discloses the limitations of the claimed invention with the exception of the varnish, painting preparation agent or other coloring substance. Varnish, painting preparation agent and other coloring substance are well known products that are sprayed using an aerosol can. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have used the device of Martini to spray varnish, painting preparation agent or other coloring substance to prevent clogging.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher S. Kim/
Primary Examiner, Art Unit 3752

CK